

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Connect America Fund

Phase I, Round 2

)
)
)
)
)

Census Block Nos:

421070003003002

421070003003001

WC Docket
No. 10-90

To: The Secretary's Office
Attn: The Wireline Competition Bureau

**OPPOSITION TO WINDSTREAM ELECTION OF 2013 PHASE I
INCREMENTAL SUPPORT**

Service Electric Cablevision, Inc.

Gary S. Lutzker

BAKERHOSTETLER, LLP
Washington Square
1050 Connecticut Ave., NW
Suite 110
Washington, D.C. 20036
202-861-1500

Its Attorneys

September 24, 2013

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	Census Block Nos:	
)		
Connect America Fund)	421070003003002	WC Docket
)	421070003003001	No. 10-90
Phase I, Round 2)		

To: The Secretary's Office
Attn: The Media Bureau

**OPPOSITION TO WINDSTREAM ELECTION OF 2013 PHASE I
INCREMENTAL SUPPORT**

Service Electric Cablevision, Inc. ("**Service Electric**"), by its attorneys and pursuant to Section 54.312(c)(7) of the rules of the Federal Communications Commission (the "**Commission**"), 47 C.F.R. § 54.312(c)(7), hereby opposes the Election of 2013 Connect America Fund Phase I Incremental Support (the "**Election**") filed by Windstream Communications, Inc. ("**Windstream**") with regard to the above-captioned Pennsylvania Census Blocks (the "**Census Blocks**").¹

The Wireline Competition Bureau (the "**Bureau**") should reject Windstream's challenge to the National Broadband Map's classification of the Census Blocks² because Service Electric offers 3 Mbps/768 kbps or greater internet service to customers in the Census Blocks and because Windstream's porting analysis is inapposite to a determination of whether Windstream is eligible to receive 2013 Phase I support in the Census Blocks. Windstream's challenge and

¹ See Letter, dated August 20, 2013 from Eric N. Einhorn, Senior Vice President, Government Affairs and Strategy, Windstream Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (the "**Election**").

² See Election at 2 and Attachment 1.

porting analysis, moreover, are belied by Service Electric's demonstration herein that it offers 3 Mbps/768 kbps or greater internet service to customers in the Census Blocks.

BACKGROUND

The Commission's Report and Order in this proceeding³ (the "**CAF Order**") delegated authority to the Bureau to implement a Connect America Phase I challenge process consistent with the standards established in the CAF Order.⁴ Where another provider contests a price-cap carrier's intention to serve (as here), the Commission held that to determine whether qualified internet service is offered to customers in the relevant census blocks, the Bureau may consider evidence such as (i) "a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers"; (ii) "current customer billing records, appropriately redacted to preserve customer privacy"; and (iii) FCC Form 477 data.⁵

With regard to a price cap carrier's challenge of the National Broadband Map's classification of a census block as served, the Commission indicated that it would consider as potentially relevant an officer's certification "that it has not ported a telephone number to the provider shown on the National Broadband Map as serving that block with service that meets the 3 Mbps/768 kbps proxy."⁶ The Commission indicated that although a "complete lack of number porting to a number of census blocks over a sufficiently long time period" may call into question whether broadband service is being offered in that area, it recognized that "customers may drop their landline service altogether, relying on mobile voice service from a wireless company and broadband from another provider."⁷ The Commission therefore concluded that the "absence of any porting activity from the incumbent to the other provider does not necessarily prove that the

³ Connect America Fund, *Report and Order*, 28 FCC Rcd 7766 (rel. May 22, 2013) (the "**CAF Order**").

⁴ *Id.*, 28 FCC Rcd at 7782, 7776 - 79 (para. 45 and paras. 28 through 33).

⁵ *Id.*, 28 FCC Rcd at 7779, para. 33.

⁶ *Id.*, at n.68.

⁷ *Id.*

cable company or WISP is not providing broadband in the area,” and encouraged “price cap carriers to supplement any evidence related to number porting with other evidence, such as information from commercial data sources regarding the presence, or lack thereof, of a broadband provider.”⁸

The Commission also established a preponderance of evidence standard to determine the status of disputed census blocks.⁹ Based on the Commission’s standards and the documentary evidence Service Electric is providing,¹⁰ Windstream’s challenge to the National Broadband Map’s classification of the Census Blocks must be rejected.

DISCUSSION

I. Service Electric Offers Qualifying Internet Service in the Census Blocks.

The evidence Service Electric is providing herein demonstrates beyond any doubt that it offers qualifying internet service in the Census Blocks because that evidence includes each form of documentary evidence approved by the Commission in the CAF Order.

First, attached hereto as Exhibit 1 is the Certification of Mark D. Walter, Service Electric’s Senior Vice President. Mr. Walter’s Certification confirms under penalty of perjury that “Service Electric offers 3 Mbps/768 kbps or greater internet service to customers in the above-captioned Census Blocks.” Second, attached hereto as Exhibit 2 are current Service Electric billing records, redacted to preserve customer privacy, along with census data confirming that the relevant addresses are located within the Census Blocks. Third, attached hereto as Exhibit 3 are copies of Service Electric’s FCC Form 477, which demonstrates that Service Electric provides qualifying internet service to the relevant census tracts. Whether

⁸ *Id.*

⁹ “Where the Bureau finds it more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map, the Bureau will deem that census block as served or unserved, as appropriate, for the purposes of Connect America Phase I.” *Id.*, at para. 33 (footnote omitted).

¹⁰ See Exhibit 1 (Certification of Mark D. Walter), Exhibit 2 (redacted current customer billing records), and Exhibit 3 (Service Electric FCC Form 477 data).

considered individually or taken together, Service Electric's documentary evidence confirms beyond any reasonable doubt that Service Electric offers qualifying internet service to customers in the Census Blocks, and therefore that Windstream's challenge to the National Broadband Map's classification of the Census Blocks must fail.

II. Windstream's Porting Analysis Is Inapposite To Whether Service Electric Offers Qualifying Internet Service In The Census Blocks.

In contrast to the hard evidence of qualifying internet service in the Census Blocks that Service Electric has provided, Windstream's challenge to the Broadband Map's classification of the Census Blocks fails to satisfy the Commission's standards and is devoid of any specific or direct evidence that the Census Blocks are not served with broadband.

As the Commission observed in the CAF Order, the absence of porting activity in the Census Blocks cannot demonstrate that Service Electric is not providing qualifying internet service *per se*.¹¹ Moreover, Windstream's porting analysis fails to provide the time period during which the analysis was conducted and fails to provide any supplementary evidence, "such as information from commercial data sources regarding the presence, or lack thereof, of a broadband provider."¹² In fact, Windstream relies solely on its internal analysis of porting activity in the Census Blocks and provides no actual evidence that they are not served with broadband. Windstream's porting analysis therefore fails the Commission's standards and is inapposite to the question of whether the Broadband Map incorrectly classified the Census Blocks as served.

As the foregoing demonstrates, when compared to Service Electric's compelling evidence that it offers 3 Mbps/768 kbps or greater internet service to customers in the Census Blocks, Windstream's porting analysis must be dismissed under the preponderance of evidence standard the Commission established in the CAF Order.¹³

¹¹ CAF Order, 28 FCC Rcd at 7779, n.68.

¹² *Id.*

¹³ *Id.*, at para. 33.

CONCLUSION

For the reasons stated above, the Bureau should reject Windstream's Election and challenge with regard to the Census Blocks, and should confirm the Broadband Map's classification of them as served and ineligible for CAF support.

Respectfully submitted,

Service Electric Cablevision, Inc.



Gary S. Lutzker

BAKERHOSTETLER
Washington Square
1050 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
202-861-1500

Its Attorneys

September 24, 2013

EXHIBIT 1

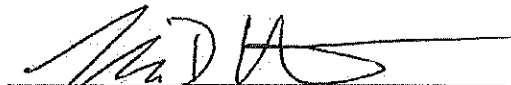
**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	Census Block Nos:	
Connect America Fund)	421070003003002	WC Docket
)	421070003003001	No. 10-90
Phase I, Round 2)		

To: The Secretary's Office
Attn: The Wireline Competition Bureau

CERTIFICATION OF MARK D. WALTER

1. My name is Mark D. Walter and I am Senior Vice President of Service Electric Cablevision, Inc. ("Service Electric"), which operates a cable television system in the above-captioned census blocks.
2. I have read the foregoing "Opposition to Windstream Election of 2013 Phase I Incremental Support" (the "Opposition") and I am familiar with the contents thereof.
3. All the internally maintained records and information relevant to the foregoing Opposition were current as of August 31, 2013.
4. I hereby certify that Service Electric offers 3 Mbps/768 kbps or greater internet service to customers in the above-captioned census blocks. With regard to census block 42107003003001, although Service Electric offers service to all three households in this rural census block, none currently are Service Electric customers. Service Electric will continue offering service to them and any other businesses and residences that may be built there pursuant to our franchise agreement with Rush Township.
5. I declare under penalty of perjury that the facts contained herein and within the foregoing Opposition are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Opposition is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.



Mark D. Walter
Senior Vice President
Service Electric Cablevision, Inc..
4949 Liberty Lane
Suite 400
Allentown, Pennsylvania 18106
Tel: (610) 432-2210

Dated: September 24, 2013

EXHIBIT 2

Statement of Service

SERVICE ELECTRIC CABLEVISION
380 MAPLEWOOD DR ;HAZLE TWP PA 18202-0000
6860 1000 VC RP 23 08242013 NNNNNYNN 01 008664 0026

149 LAFAYETTE AVE
TAMAQUA PA 18252-4619

Page 1 of 3
Billing Date: August 23, 2013
Account Number:

How to reach us
FOR QUESTIONS REGARDING BILLING OR
SERVICE CALL 800-242-3707 OR VISIT
OUR WEB SITE - www.secv.com



For Service At...
149 LAFAYETTE AVE
TAMAQUA PA 18252-4619

Account Summary

Please see page 3 for account details.

Previous Balance	\$962.52
Payment(s)	-962.52
Monthly Charge(s)	950.04
Taxes & Fee(s)	12.48
Balance Due	\$962.52
Payment Due Date	09/12/13



For Your Information

THANK YOU FOR GIVING US THE OPPORTUNITY TO SERVE YOU!

FREE PREVIEW WEEKEND: Watch HBO & Cinemax 9/6-9/9 and see what you've been missing. Catch the season 4 premiere of Boardwalk Empire and enjoy the hottest original series and biggest Hollywood hits on HBO & Cinemax from SECVI Use the parental control features on your converter box to block any adult-only content. Contact your local office if you need assistance.

Payment Coupon

Please detach and enclose this portion with your payment. Please do not send cash. Make checks payable to **SERVICE ELECTRIC CABLE**.

Are You Moving?
If so, please contact your
local Service Electric Office.

Billing Date: August 23, 2013

Account Number

Name:

149 LAFAYETTE AVE
TAMAQUA PA 18252-4619

Balance Due \$962.52
Payment Due Date 09/12/13

Amount Enclosed \$

SERVICE ELECTRIC CABLE
PO BOX 62144
BALTIMORE MD 21264-2144



886010023000923500962522

Account Information:		149 LAFAYETTE AVE TAMAQUA PA 18252 570-668-1775																															
<div>Account Info Profile Services</div> <div>Account Customer</div>																																	
<div> <div>Last, First Name:</div> <div>Responsible Party:</div> <div>Primary Phone:</div> <div>Address 1: 149 LAFAYETTE AVE</div> <div>Address 2:</div> <div>City: TAMAQUA</div> <div>State: PA Zip: 18252-4619</div> </div> <div> <div>Ssl: Unknown</div> <div>Alt Phone: 000 000-0000 ID:</div> <div>Tax Type: Not Provided/Requested</div> <div>Tax ID: XXXXXXXXX</div> <div>Vip: Bulk Master</div> </div>		<div>Statement</div> <div> Cycle Day: 23 Bill From: 09/01/13 Bill To: 09/30/13 Stmt Balance: 962.52 </div>																															
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Enter a street address, city and state, or a street address and ZIP code. Click 'Go'.

Note: address search will use the latest available address data beginning with 2012 and working backwards, based on the contents

street address city state zip GO
 149 Lafayette Avenue Tamaqua Pennsylvania 18252

Geographies containing **149 Lafayette Ave, TAMAQUA, PA, 18252:**

Select geographies to add to Your Selections

Geography Results:

Geography Name	Geography Type	Geography Code
Pennsylvania	State	040
Schuylkill County, Pennsylvania	County	050
Rush township, Schuylkill County, Pennsylvania	County Subdivision	060
Block 3002, Block Group 3, Census Tract 3, Schuylkill County, Pennsylvania	Block	100
Census Tract 3, Schuylkill County, Pennsylvania	Census Tract	140
Block Group 3, Census Tract 3, Schuylkill County, Pennsylvania	Block Group within Census Tract	150
Pottsville, PA Micro Area	Metro/Micro Statistical Area	310
Congressional District 17 (111th Congress), Pennsylvania	Congressional District	500
Congressional District 17 (113th Congress), Pennsylvania	Congressional District	500
State Senate District 29 (2010), Pennsylvania	State Legislative District (Upper)	610
State House District 124 (2010), Pennsylvania	State Legislative District (Lower)	620
RUSH TWP DIST EAST, Schuylkill County, Pennsylvania	Voting District/Remainder	700
PUMA5 03500, Pennsylvania	Public Use Microdata Area (PUMA)	795
ZCTA5 18252	5-Digit ZCTA	860
ZIP 18252 (Tamaqua, PA)	5-Digit ZIP Code	861
Tamaqua Area School District, Pennsylvania	School District (Unified)/Remainder	970
Balance of Schuylkill County, Pennsylvania	Economic Place	E60

EXHIBIT 3

Form 477 Submission for FRN: 3737673, Company: Service Electric Cablevision, Inc., State: PA, Operations: Non-ILEC, Data as of Jun 30, 2013**Status:** On **Sep 02, 2013**, the status for this Form 477 submission was changed to **Original - Submitted**.

All filers must complete Items 1 through 11 below

Data Description	Value
Data as of	Jun 30, 2013
1. FRN	3737673
2. Company	Service Electric Cablevision, Inc.
3. Type of Operations	<input type="radio"/> ILEC <input checked="" type="radio"/> Non-ILEC
4. Use this drop-down list to select a single name, such as the holding company, to identify all commonly-owned or commonly-controlled filers. Commonly-controlled filers with no holding company should decide on a single name to use for this question. Select "not shown" if no appropriate name appears in the list.	not shown
If you selected "not shown" above, type in the single name that will identify all commonly-owned or commonly-controlled filers.	Service Electric Cablevision, Inc.
5. State	PA
6. Contact person (person who prepared the submitted data)	Robert Wieand
7. Contact person telephone number and email address	Phone. 610-432-2210 Email. robert.wieand@secv.com Confirm Email. robert.wieand@secv.com
8. Status of submission	Original - Submitted
9. Indicate whether you request non-disclosure of some or all of the information in this submission because you believe that this information is privileged and confidential and public disclosure of such information would likely cause substantial harm to the competitive position of the filer.	<input type="radio"/> No <input checked="" type="radio"/> Yes
10. Official (corporate officer, managing partner, or sole proprietor) whose signature certifies that he/she has examined the information contained in this Form 477 and that, to the best of his/her knowledge, information and belief, all statements of fact contained in this Form 477 are true and correct. For purposes of this Form 477, the entry of the official's name on this line shall constitute that official's electronic signature to this certification. Persons making willful false statements in a Form 477 can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).	Robert Wieand
11. Certifying official telephone number and email address	Phone. 610-432-2210 Email. robert.wieand@secv.com

Census Tract / Technology.

Technology of the connections: Cable Modem

Census Tract: State: PA County: Schuylkill County Census Tract: 3.00

DOWNLOAD INFORMATION TRANSFER RATE.

UPLOAD INFORMATION TRANSFER RATE:	Greater than 200 kbps and less than 768 kbps	Greater than or equal to 768 kbps and less than 1.5 mbps	Greater than or equal to 1.5 mbps and less than 3 mbps	Greater than or equal to 3 mbps and less than 6 mbps	Greater than or equal to 6 mbps and less than 10 mbps	Greater than or equal to 10 mbps and less than 25 mbps	Greater than or equal to 25 mbps and less than 100 mbps	Greater than or equal to 100 mbps
Less than or equal to 200 kbps	9							
Number of Connections:		100.000						
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than 200 kbps and less than 768 kbps		5	16					
Number of Connections:			100.000	100.000				
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 768 kbps and less than 1.5 mbps				445				
Number of Connections:				100.000				
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 1.5 mbps and less than 3 mbps						401		
Number of Connections:						100.000		
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 3 mbps and less than 6 mbps							204	
Number of Connections:							100.000	
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 6 mbps and less than 10 mbps								
Number of Connections:								
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 10 mbps and less than 25 mbps								
Number of Connections:								
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 25 mbps and less than 100 mbps								
Number of Connections:								
Percentage Residential:	%	%	%	%	%	%	%	%
Greater than or equal to 100 mbps								
Number of Connections:								
Percentage Residential:	%	%	%	%	%	%	%	%

Census Tract Detail - Technologies except Terrestrial Mobile Wireless